

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION SIX**

TOMKINS INDUSTRIES, INC., RUSKIN DIVISION
D/B/A RUSKIN MANUFACTURING¹

Employer

and

Case 6-RC-11634

SHEET METAL WORKERS' INTERNATIONAL
ASSOCIATION, LOCAL UNION #33, AFL-CIO

Petitioner

DECISION AND DIRECTION OF ELECTION

Upon a petition duly filed under Section 9(c) of the National Labor Relations Act, a hearing was held before Clifford E. Spungen, a hearing officer of the National Labor Relations Board.

Pursuant to the provisions of Section 3(b) of the Act, the Board has delegated its powers in connection with this case to the undersigned Regional Director.²

Upon the entire record³ in this case, the Regional Director finds:

1. The hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.

¹ At the hearing the Employer asserted that its correct is Tompkins Industries, Inc., Ruskin Division. The Petitioner declined to amend its petition to so describe the Employer, and the Employer failed to submit any evidence in support of its assertion.

² Under the provisions of Section 102.67 of the Board's Rules and Regulations, a request for review of this Decision may be filed with the National Labor Relations Board, addressed to the Executive Secretary, 1099 14th Street, N.W., Washington, D.C. 20570-0001. This request must be received by the Board in Washington by March 19, 1999.

³ The Employer and the Petitioner filed timely briefs in this matter, which have been duly considered by the undersigned.

2. The Employer is engaged in commerce within the meaning of the Act and it will effectuate the purposes of the Act to assert jurisdiction herein.

3. The labor organization involved claims to represent certain employees of the Employer.

4. A question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of Section 9(c)(l) and Section 2(6) and (7) of the Act.

The Petitioner seeks to represent a unit consisting of all full-time and regular part-time production and maintenance employees employed by the Employer at its Fairmont, West Virginia facility, excluding all office clerical employees and guards, professional employees⁴ and supervisors⁵ as defined in the Act. There are approximately fifty-seven assemblers, two material handlers,⁶ approximately ten shippers, one maintenance helper, one painter, twenty-five welders, three maintenance employees, one plasma torch operator, three CNC operators, one small parts machinist and four machinists in the petitioned-for unit.

While the parties are in agreement that production employees⁷ are appropriately included in the petitioned-for unit, the Employer, contrary to the Petitioner, would exclude the maintenance helper, maintenance employees, shippers and material handlers on the ground

⁴ At the hearing the parties stipulated that the individuals in the job classifications of production planner and process quality engineer are professional employees and therefore should be excluded from the unit found appropriate herein.

⁵ At the hearing the parties stipulated, and I find, that the following individuals are supervisors within the meaning of Section 2(11) of the Act in that they possess one or more of the statutory indicia of supervisory status and, therefore, they are excluded from the unit found appropriate herein: Plant Manager Dennis Davis, Plant Superintendent Jim Vermillion, Production Supervisors Bob Goots, Steve Woods, Jeff Taylor, Bob Shinn, William Wilson, Human Resources Manager Ron Keener, Inventory Control Representative John Chipps, Tool and Die Supervisor Dwayne Davis and Manufacturing Engineer John Vincent.

⁶ Material handlers are also referred to in the record as material handlers/receivers.

⁷ Production employees are employed within the job classifications of assembler, painter, welders, plasma torch operator, CNC operator, small parts machinist and machinist.

that these employees do not share a community of interest with the production employees.⁸

There is no history of collective bargaining at the Employer's Fairmont, West Virginia, facility involving any of the employees whom the Petitioner seeks to represent.

The Employer, an Ohio corporation, with an office and place of business in Fairmont, West Virginia, is engaged in the manufacture of louvers, dampers and sound attenuation equipment for heating, ventilating and air conditioning systems. In addition to the Fairmont, West Virginia, facility, the Employer operates other manufacturing facilities in Mira Loma, California; Minden, Louisiana; Parsons, Kansas; Galesburg, Kansas; and Lexington, Kentucky.⁹ Solely involved in this proceeding is the Employer's Fairmont, West Virginia, facility.

The Employer's Fairmont facility is encompassed within a single building spanning 165,000 square feet. The record indicates that at present the Employer has approximately nine production lines, a tool and die area, maintenance room, paint room, receiving area and commercial and industrial shipping areas. The Employer's facility generally operates on

⁸ At the hearing the parties stipulated that temporary employees working at the Employer's Fairmont, West Virginia, facility are not properly included in the petitioned-for unit inasmuch as temporary employees are not employed by the Employer; rather these employees are employed by third party agencies such as Manpower, Inc. Accordingly, I find that the temporary employees should be excluded from the unit found appropriate herein.

In addition, at the hearing the parties agreed that probationary employees should not be included in the unit. At the time of the hearing one probationary employee, material handler Larry Dalton was employed by the Employer. The record did not indicate when Dalton would complete his 90-day probationary period. The record reveals that probationary employees do not enjoy the benefits accorded to regular employees who have passed their 90-day probationary period. Unlike the hourly employees, probationary employees cannot bid on open positions which are posted at the facility. Probationary employees are evaluated every 30 days of their probationary period whereas employees who have passed their probationary period are not evaluated. Probationary employees do not wear the required company uniform as do other employees. The Employer's attendance policy does not apply to probationary employees. Whereas non-probationary employees will be terminated upon their seventh attendance occurrence, probationary employees are entitled to only two occurrences. In accordance with the agreement of the parties, noting that this agreement does not contravene any statutory proscription, and based on the record herein, I find that probationary employees should be excluded from the unit found appropriate herein. See Banner Bedding, Inc., 214 NLRB 1013 (1974).

⁹ At each of the Employer's other five facilities, constituent locals of Petitioner's International Union represent production, maintenance, shipping and receiving employees in a single unit. It appears that at one time some years ago the maintenance employees at the Minden, Louisiana, facility were not included in the bargaining unit.

weekdays, although the record establishes that production, maintenance and shipping and receiving employees often work on Saturdays and, at times, on Sundays. The regular hours of the production, maintenance, shipping and receiving employees are from 7:00 a.m. to 3:30 p.m.

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The Fairmont plant is under the overall supervision of Plant Manager Dennis Davis. Reporting to Davis are Plant Superintendent Jim Vermillion, the production planners, inventory control representative, buyer and human resources manager. Five production supervisors report to Plant Superintendent Vermillion.

At the front of the facility are several truck bays. Immediately inside the facility is a receiving area where material handlers receive material and distribute it to the various production lines via fork lifts along the various fork lift accessways. The production process is divided into production units or departments¹¹ where the delivered steel or extruded aluminum is cut to size and built into the appropriate frames. Production employees are provided with a "cut sheet" which contains directions as to the cutting of materials and assembly of finished product. Once the product is finished, it is sent to commercial or industrial shipping¹² for final inspection, cleaning, painting of welds, if required, crating and outbound shipment to customers.

¹⁰ During the summer months, production, maintenance and shipping employees work from 6:00 a.m. to 7:30 p.m.

¹¹ The Rink department manufactures silencers for duct work. The S3G Damper department manufactures back draft dampers. The BD Line produces extruded aluminum back draft dampers. The CD50 department manufactures control dampers made of extruded aluminum. The next department is the Industrial Heavy Duty Square department in which heavy duty square dampers are built. In the Industrial Round department and IVD department, heavy duty round dampers and inlet vein dampers are manufactured. The next production area is the Access Doors line. The 35 line, which also produces control dampers, was recently moved to an open area in the facility.

¹² Commercial shipping deals with shipment of dampers for the Rink, CD, BD, S3G, and 35 production lines. Industrial shipping is responsible for shipment of product from the Industrial Square, Industrial Round, IVD and Access Doors departments.

Maintenance department employees repair and perform preventative maintenance on equipment, working either on the production floor or taking equipment to the maintenance area which is across from the Access Doors department on the production floor.

The Employer has three wage classifications. Class I employees, which include employees working in the job classifications of assemblers, material handlers, shippers, maintenance helper and painter, are paid at the wage rate of \$6.50 per hour. Class II employees, which include employees working in the job classifications of welder, maintenance, plasma torch operator, CNC operator and small parts machinist, are paid at the wage rate of \$8.00 per hour. Class III employees, which grouping includes only production department machinists, are paid at the wage rate of \$11.50 per hour.

Production, maintenance, shipping and receiving employees wear the same company-issued uniforms. These employees are also reimbursed in the amount of \$50 per year for safety shoes which are required to be worn by all employees at the facility. The employees share a common locker room and restroom at the facility and park in the employee parking lot.¹³

The Employer has a job posting process whereby openings in any position are posted in the plant for three days. Any interested employee can sign a job request form for any open position regardless of department. The Employer awards positions to the most senior, qualified bidder.

All hourly employees at the facility enjoy company-wide medical and dental insurance, life insurance, short-term disability insurance and long-term disability insurance. Likewise, all hourly employees are entitled to holiday pay, jury pay and bereavement pay. All receive the same amount of vacation days and sick days. The employees are permitted to have two, ten

¹³ Management employees have a separate restroom facility and parking lot.

minute breaks during the course of their shift. At present the facility has one main lunchroom¹⁴ for use by all employees. The designated lunch time for all hourly employees is from 11:30 a.m. to noon. The Employer's attendance policy and work rules apply uniformly to all employees. All hourly employees punch the time clock which is located in front of the main offices. The record also indicates that all hourly employees receive a \$25 gift certificate at Thanksgiving as well as rewards given by the Employer when a month passes during which no one in the workforce has lost time due to an injury. Finally, all hourly employees received the 30 cent per hour across the board wage increase in 1998.

The Employer does not distinguish between its hourly employees for purposes of having them serve on quality committees or for attending training. Hourly employees participate in small group "PMT" meetings, which apparently are held to deal with various overall safety and quality issues. The groups are not specific to one department; rather employees from production, maintenance, shipping and receiving participate together on various committees. In addition, all hourly employees have been trained on using the overhead crane.

Maintenance Department

As stated previously, the Employer contends, contrary to the Petitioner, that the maintenance helper and maintenance employees should be excluded from the petitioned-for unit inasmuch as they lack a community of interest with production employees.

While performing their work, maintenance employees have access to the entire production floor including the paint shop and office areas. Maintenance employees will also work outside the facility maintaining driveways and the lighting.

The maintenance employees report directly to Plant Superintendent Jim Vermillion. Vermillion will handle any necessary discipline but would not solely determine whether to terminate a maintenance employee. As is the case with production employees, the immediate

¹⁴ Inasmuch as the lunchroom is not large enough to accommodate all employees during the lunch period, employees are free to eat their lunch by the dock or elsewhere in the facility. Some maintenance employees eat at a table in their work area.

supervisor must confer with the Plant Manager and Human Resources Manager before termination can occur. Any discipline issued to maintenance employees as well as any other employee for violation of the attendance policy is handled by the Human Resources Manager.

Maintenance employees perform preventative maintenance¹⁵ on production equipment, handle production equipment breakdowns, relocate equipment within the facility and perform rewiring. Normally, Vermillion provides a list of duties to maintenance employees. The maintenance employees will then decide among themselves which duties each will perform and will go about their work with little direct supervision. Production Line supervisors contact maintenance employees regarding problems to be repaired. The maintenance employees then prioritize their work such that more important repair work is performed first. It appears that, on occasion, one maintenance employee is required to purchase parts for repairs at local supply houses and will at times place orders on behalf of the Employer.

The record establishes that the maintenance employees interact with production employees regarding machinery malfunctions. Production employees will, at times, call out to a passing maintenance employee if there is a problem, but generally a production supervisor communicates with Vermillion or with a maintenance employee regarding the need for service. With the exception of maintenance helper Dalton, the maintenance employees carry radios in the performance of their duties whereas production employees do not.¹⁶

The record indicates that maintenance employees work overtime when production employees are working. For instance, if a production line is operating on Saturday, at least one maintenance employee must be present at the facility. Production employees and maintenance employees have also worked overtime to assist in moving production lines.

¹⁵ The maintenance helper (Roger Dalton) is primarily responsible for lubricating and cleaning production machinery and for performing preventative maintenance on a rotation basis.

¹⁶ Material handlers also carry radios at work. The maintenance employees and material handlers utilize channel 2 on the Employer's radio. Supervisors utilize channel 1 when contacting each other.

The Employer does not require specialized training or completion of any programs for maintenance employees. Production employees perform certain basic maintenance functions on their machines and use the maintenance department grinders and washers in doing so. Production employees also operate the overhead crane, set control panels and turn wrenches to assist maintenance employees. However, production employees generally do not perform any electrical, pneumatic or hydraulic work.

Maintenance employees wear the same uniforms as production employees. They punch the same time clock, have identical benefits and are subject to the same employment policies. The maintenance employees are supervised directly by Plant Superintendent Vermillion, whereas production employees are supervised by one of five production supervisors who in turn report directly to Vermillion. Maintenance employees are paid according to the Class II pay schedule as are production employees in the classifications of welder, plasma torch operator, CNC operator and small parts machinist.

The record contains examples of employees beginning their employment in the production department and thereafter transferring to maintenance either by bid or by assignment of the Employer. The record further reveals that about ten percent of maintenance employees' time is spent assisting material handlers in unloading trucks.

Shipping

The Employer contends, contrary to the Petitioner, that the ten shippers should be excluded from the petitioned-for unit inasmuch as they lack a community of interest with the production employees. As previously indicated, the shipping function is divided into commercial shipping and industrial shipping such that the employees in commercial shipping handle products from the Rink, CD, BD, S3G and 35 lines; whereas the employees in industrial shipping handle finished products from the Industrial Square, Industrial Round, IVD and Access Doors lines. Consequently, the commercial shipping area is physically located along the end of the "commercial" production work stations, and the industrial shipping area is physically located near the "industrial" work stations.

Initially, the record establishes that the employees in the shippers classification work the same shift as production employees, wear the same uniforms, and punch the same time clock. All are subject to the same benefit package and employment policies. The shippers are paid according to the Class I pay scale, as are certain of the production employees such as those in the job classification of assembler and painter.

The record also establishes that the shippers handle the same "cut sheet" used by production employees in the production process. After building the shipping crate for the finished product, the shipper will attach the invoice and bill of lading to the "cut sheet" and ship the product.

Some of the Employer's customers require the finished products to be inspected and tagged. Such inspections are completed by the final assembler in the production area. The shipper will also check to make sure that the item was properly tagged. The cut sheet indicates whether the product is to be shipped by parcel post type carrier, LTL (less than load) carrier or a flat bed truck.

The Employer utilizes approximately three main trucking companies and several LTL carriers. Within that parameter the shipper has discretion in deciding which carrier is used to ship a particular package. The record indicates that representatives of the shipping companies will entertain or provide promotional items to shippers to solicit business. In addition, two shipping firms utilized by the Employer, RPS and UPS, have furnished the Employer with computer terminals for tracking the shipment of the product. The record indicates that only shipping employees have been trained with respect to these computers.

Shippers also utilize computer terminals which are located in the office closest to the shipping area to run the bills of lading, invoices and address labels needed for the shipments. The use of the computers requires some shipping employees to spend about 10 to 15 percent of their time in the office area.

The commercial shippers report directly to Jeff Taylor, who also has supervisory duties with respect to the control damper production line. The industrial shippers report directly to

Steve Woods, who also supervises production employees working on the industrial lines. Both Taylor and Woods, report to Plant Superintendent Vermillion.

The record contains examples of employees being hired in production positions and thereafter being transferred to shipping in order to meet the needs of the Employer or by the bid process. Moreover, one to two times per week, shippers will work on production lines. In turn, production employees assist shippers several times each month, especially on Fridays, to meet the shipping schedule. If a production line is required to work overtime, usually the commercial shipping department will likewise work overtime.

In performing their duties, the shippers utilized tools such as pneumatic air, staple and nail guns, hammers, fork trucks, overhead cranes, tablesaws, shrink wrapper and computers.

Receiving

The Employer, contrary to the Petitioner, wishes to exclude the two material handlers in the receiving department from the petitioned-for unit on the basis that they lack a community of interest with the production employees. The material handlers are paid according to the Employer's Class I scale. The material handlers report directly to Inventory Control Representative John Chipps who in turn reports to Plant Superintendent Vermillion. Chipps does not supervise any other employees.

Receivers receive raw materials from outside vendors and distribute them to the various production departments. The receiving area encompasses a desk at the front of the facility where the receivers will pick up smaller packages from shippers such as UPS. The packages are checked in and distributed. If the receivers do not know to which department to deliver the package they consult Plant Superintendent Vermillion. The receivers also work at the back of the facility next to the maintenance area where there is an overhead door. At this location all of the cold rolled steel, flat steel, coils and extrusions are delivered to the facility. The receivers will receive the material and then distribute it via fork lift to the appropriate production lines. Once the material is distributed to the box at the particular production line, the production saw person will cut the product and the production process begins.

Analysis

It is well established that a plantwide unit of all production and maintenance employees is presumptively appropriate in the absence of cogent reasons to the contrary. Rembrandt Lamp Corp., 128 NLRB 905, 906 (1960), citing Dexdale Hosiery Mills, 115 NLRB 228, 230 (1956). The mere fact that maintenance employees perform work that is distinct from that of production employees will not cause the Board to find a requested production and maintenance unit inappropriate. Rembrandt Lamp Corp., supra. Even if such a requested unit was not presumptively appropriate, it is further well established that a petitioned-for unit need only be an appropriate unit for collective bargaining, not the most appropriate unit. Omni International Hotel, 283 NLRB 475 (1987). In addition, the unit sought by the Petitioner is always a relevant consideration, and the Board first considers the appropriateness of the unit sought by the Petitioner. Overnight Transportation Company, 322 NLRB 723 (1996).

In the instant case, all production and maintenance employees are hourly paid, enjoy similar working conditions and benefits and all are subject to the same employment policies. The record establishes that these employees work in close proximity to each other and have daily contact. The work of the maintenance employees is an integral part of the production process. Moreover, the maintenance employees, while performing important functions, are not so highly skilled as to require their exclusion from the unit. Cf. Ore-Ida Foods, 313 NLRB 1016 (1994), in which case the petitioner sought to represent a unit limited to maintenance employees. Although the maintenance employees herein are directly supervised by the plant superintendent, they do receive some instruction from the five production supervisors. In addition, Vermillion indirectly supervises the production employees inasmuch as the production supervisors report directly to him.

Based the record herein, it appears that the production and maintenance employees are part of a functionally interdependent production process. Production employees perform basic maintenance functions on machines and operate the overhead crane as needed. Production and maintenance employees will work together on projects such as moving production lines to

different areas in the facility. In addition, there are several examples of maintenance employees who transferred to their positions from positions in the production department. Likewise, there is one example in the record of an employee who began his employment in the maintenance department but was transferred to the S3G production line.

Based on the above and the record as a whole, I conclude that there is no cogent reason to divide production and maintenance employees.¹⁷ Accordingly, I shall include maintenance employees and the maintenance helper in the unit found appropriate herein.

There remains for consideration the placement of the shipping and receiving employees. Like production employees, the shippers and material handlers are hourly paid employees who punch a time clock. They work the same general hours and receive the same fringe benefits as do production employees. The job functions of material handlers and shippers include receiving incoming goods and materials, distributing them to production employees and dispatching finished product to the Employer's customers. Moreover, there is evidence of job interchange between shippers and production employees. Based on the above, and the record as a whole, it is clear that shipping and receiving employees are an integrated part of the production process and that their interests are closely allied with employees in production and maintenance. See Sohio Natural Resources Company, 237 NLRB 1261 (1978). Accordingly, I shall include the shippers and material handlers in the unit found appropriate herein.

¹⁷ The Board's decision in American Cyanamid Company, 130 NLRB 1 (1961), modified 131 NLRB 909 (1961), relied on by the Employer, is not to the contrary. In that case separate petitions were filed by two labor organizations. One union requested to represent production and maintenance employees in a single unit; the other union requested to represent a maintenance only unit. The Board initially found that the production and maintenance unit alone was appropriate, but that decision was later modified such that the Board said either of the requested units may be appropriate and directed a self determination election wherein the maintenance employees could indicate their choice to be represented by the competing labor organizations.

In the instant case, no labor organization seeks to represent the maintenance employees separately. Accordingly, the Employer's reliance on American Cyanamid Company, in support of its position that maintenance employees may not be included in the requested production and maintenance unit, is misplaced.

Accordingly, I find that the following employees of the Employer constitute the unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act:

All full-time and regular part-time production and maintenance employees, including shippers and material handlers, employed by the Employer at its Fairmont, West Virginia, facility; excluding all temporary employees, probationary employees, office clerical employees and guards, professional employees and supervisors as defined in the Act.

DIRECTION OF ELECTION

An election by secret ballot will be conducted by the undersigned Regional Director among the employees in the unit set forth above at the time and place set forth in the Notice of Election to be issued subsequently, subject to the Board's Rules and Regulations.¹⁸ Eligible to vote are those employees in the unit who were employed during the payroll period immediately preceding the date below, including employees who did not work during that period because they were ill, on vacation or temporarily laid off. Also eligible are employees engaged in an economic strike which commenced less than 12 months before the election date and who retained their status as such during the eligibility period and their replacements. Those in the military services of the United States may vote if they appear in person at the polls. Ineligible to vote are employees who have quit or been discharged for cause since the designated payroll period and employees engaged in a strike who have been discharged for cause since the commencement thereof and who have not been rehired or reinstated before the election date, and employees engaged in an economic strike which commenced more than 12 months before

¹⁸ Pursuant to Section I03.20 of the Board's Rules and Regulations, official Notices of Election shall be posted by the Employer in conspicuous places at least 3 full working days prior to 12:01 a.m. of the day of the election. As soon as the election arrangements are finalized, the Employer will be informed when the Notices must be posted in order to comply with the posting requirement. Failure to post the Election Notices as required shall be grounds for setting aside the election whenever proper and timely objections are filed.

the election date and who have been permanently replaced.¹⁹ Those eligible shall vote whether or not they desire to be represented for collective bargaining by Sheet Metal Workers' International Association, Local Union #33, AFL-CIO.

Dated at Pittsburgh, Pennsylvania, this 5th day of March 1999.

/s/Gerald Kobell

Gerald Kobell
Regional Director, Region Six

NATIONAL LABOR RELATIONS BOARD
Room 1501, 1000 Liberty Avenue
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¹⁹ In order to assure that all eligible voters may have the opportunity to be informed of the issues in the exercise of their statutory right to vote, all parties to the election should have access to a list of voters and their addresses, which may be used to communicate with them. Excelsior Underwear, Inc. 156 NLRB 1236 (1966); NLRB v. Wyman-Gordon Company, 394 U.S. 759 (1969). Accordingly, it is hereby directed that the election eligibility list, containing the full names and addresses of all eligible voters, must be filed by the Employer with the Regional Director within seven (7) days of the date of this Decision and Direction of Election. The Regional Director shall make the list available to all parties to the election. In order to be timely filed, such list must be received in the Regional Office, Room 1501, 1000 Liberty Avenue, Pittsburgh, PA 15222, on or before March 12, 1999. No extension of time to file this list may be granted, except in extraordinary circumstances, nor shall the filing of a request for review operate to stay the requirement here imposed.